

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:21-CV-342

VICKI L. BRITT,)
Plaintiff,)
v.)
GERALD M. BAKER in his individual and)
official capacity as SHERIFF OF WAKE)
COUNTY, and UNKNOWN SURETY)
COMPANY, as surety,)
Defendants.)

NOTICE OF REMOVAL

NOW COMES Defendant Sheriff Gerald M. Baker (“Defendant Baker”), by and through the undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and E.D.N.C. Local Rule 5.3, hereby gives notice of the removal of this civil action from the General Court of Justice, Superior Court Division, Wake County, State of North Carolina, to the United States District Court for the Eastern District of North Carolina, Western Division. In support, Defendant Baker states as follows:

1. On June 25, 2021, Plaintiff commenced this action by filing an Application for an Order Extending Time to File a Complaint (“Rule 3 Application”), captioned *Vicki L. Britt v. Gerald M. Baker in his individual and official capacity as Sheriff of Wake County, and Unknown Surety*, Civil Action No. 21 CVS 8767, in the General Court of Justice, Superior Court Division, Wake County, State of North Carolina (“Superior Court of Wake County”).
2. On June 25, 2021, the Superior Court of Wake County entered an Order Extending Time to File the Complaint up to and including July 15, 2021 (“Rule 3 Order”) and issued a Civil Summons to be Served with Order Extending Time to File Complaint (“Rule 3 Summons”).

3. On July 15, 2021, Plaintiff filed her Complaint (“Original Complaint”) and was issued a Summons (“Original Summons”). The Original Complaint has not been served upon Defendant Baker.

4. On July 15, 2021, Plaintiff filed her Amended Complaint and an Amended Summons was issued.

5. On July 27, 2021, Plaintiff served upon Defendant Baker, via certified mail, the following: (1) Rule 3 Application; (2) Rule 3 Order; (3) Original Summons; and (4) Amended Complaint.

6. Pursuant to 28 U.S.C. § 1446(b), “notice of removal of a civil action or proceeding shall be filed . . . within thirty days after the service of summons upon the defendant” or by **August 26, 2021**. Accordingly, this Notice of Removal is timely filed with the Court.

7. This Court has original jurisdiction over Plaintiff’s Complaint under 28 U.S.C. § 1331 because Plaintiff’s Complaint purports to allege a claim under Title VII of the Civil Rights Act of 1964 (“Title VII”) (codified at 42 U.S.C. § 2000e, *et seq.*), and therefore this civil action raises a federal question arising under the laws of the United States. *See* 28 U.S.C. § 1331.

8. The Eastern District of North Carolina, Western Division, is the United States District Court and Division embracing the place where Plaintiff’s state court action is pending. Therefore, Plaintiff’s state court action may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

9. All Defendants consent and join in this Notice of Removal pursuant to 28 U.S.C. § 1446(a).

10. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Plaintiff will be served with written notice of removal, and a copy of this Notice of Removal is being filed with the Clerk of the Superior Court Division for Wake County, North Carolina.

11. Defendants will serve and file the Notice of Removal as an Exhibit to its Notice of Filing Notice of Removal.

12. The Rule 3 Application and Order, Rule 3 Summons, Amended Complaint, and Original Summons constitute all process and pleadings served upon or filed by Defendants in the state court action in this matter. True and accurate copies of the Rule 3 Application and Order, Rule 3 Summons, Amended Complaint, Original Summons are attached as **Exhibit A – Exhibit D**, respectively.

13. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any of Defendants rights to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under North Carolina, Fed. R. Civ. P. 12, any state or federal statute, or otherwise.

14. Defendants reserve the right to supplement its Notice of Removal by adding any jurisdictional defenses which may independently support a basis for removal.

15. Based upon the foregoing, this civil action is properly removable to this Court pursuant to 28 U.S.C. § 1441 and has been properly removed pursuant to 28 U.S.C. § 1446.

WHEREFORE Defendant Baker respectfully requests that this civil action be removed to this Court and this Court exercise jurisdiction over all issues therein.

This the 25th day of August 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies to this Court that this **NOTICE OF REMOVAL** has been served pursuant to Fed. R. Civ. P. 5 by depositing a copy thereof, first class postage prepaid, in the United States mail at the United States Post Office, Raleigh, North Carolina, addressed as follows:

Bryan M. Sumner
434 Fayetteville St., Ste. 2530
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Telephone: (919) 838-5295
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Attorney for Plaintiff

This the 25th day of August 2021.

Respectfully submitted,

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